

# Calendar No. 63

82D CONGRESS }  
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SENATE

{ REPORT  
No. 55

## MRS. DOROTHY MANIOUS

JANUARY 29, 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany S. 484]

The Committee on the Judiciary, to which was referred the bill (S. 484) for the relief of Mrs. Dorothy Manious, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to pay the sum of \$2,500 to Mrs. Dorothy Manious for personal injuries sustained as the result of an accident involving a United States Army vehicle in Munich, Germany, on January 31, 1948.

#### STATEMENT

On January 31, 1948, at about 7:50 p. m., an Army 2½-ton truck traveling through the streets of Munich, Germany, at a speed of about 40 miles an hour, with a military police car in pursuit, crashed into a Ford sedan owned and operated by First Lt. Anthony R. Parrish, in which his wife, Mrs. Anne Parrish, and First Lt. Alvin C. Manious and the latter's wife, Mrs. Dorothy Manious, were riding as passengers. Lieutenant Manious was instantly killed, and Mrs. Manious sustained personal injuries.

The Department of the Army, in its report, states:

The evidence clearly establishes that this accident and the resulting death of Lieutenant Manious and personal injury of Mrs. Manious were not caused by any fault or negligence on their part but were caused by the wanton and willful negligence of the driver of the Army truck involved. Since, however, the evidence also discloses that at the time of the accident the driver of the Army truck was using such vehicle without authority and for a personal mission, and, therefore, was not acting within the scope of his employment as a soldier, there is no

obligation on the part of the United States to compensate the claimant for the damages sustained by her. The Department of the Army therefore refrains from making any recommendation either for or against the enactment of the bill, insofar as it would grant an award to Mrs. Manious for the personal injuries, property damage, and loss of earnings sustained by her and any medical expenses incurred for the treatment of her injuries, preferring to leave this aspect of the matter to the equitable determination of the Congress.

\* \* \* \* \*

If, under the circumstances, the committee should look with favor upon the proposal to compensate Mrs. Manious for the property damage, personal injuries, medical expenses, and loss of earnings sustained by her as a result of this accident, the Department of the Army would have no objection to the granting of an award to her in the sum of \$2,500.

The committee has no established policy on this type of claim; that is, where the negligence of the governmental employee is admitted, wanton and gross, though the vehicle was operated "beyond the scope of authority." Each case has been judged on its over-all merits, warranting or not, as the case may be, the intercession of the Congress.

Under the circumstances, it is believed the instant claim merits favorable consideration. The facts substantiating this recommendation encompass the following considerations: that the amount involved has been reduced from \$12,000 to \$2,500; that the negligence, as said, was wanton, gross, and admitted; that the Department makes no recommendation for or against, leaving the matter to congressional policy; that claimant's injuries, loss of earnings, and damage to property are perfectly in line with the amount of the proposed award; that in the same accident claimant lost her husband and, although she is the recipient of those death benefits, nonetheless a residue of compassion remains; and, finally, that if claimant had been a German citizen she would have been paid under existing law administratively.

Attached hereto and made a part thereof is the applicable governmental report:

DEPARTMENT OF THE ARMY,  
Washington, D. C., May 17, 1949.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives.

DEAR MR. CELLER: Reference is made to your letter enclosing a copy of H. R. 2929, Eighty-first Congress, a bill for the relief of Mrs. Dorothy Manious, and requesting a report on the merits of the bill.

This bill would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Dorothy Manious, Nebraska City, Nebr., the sum of \$10,000, in full settlement of her claim against the United States arising out of the death of Alvin C. Manious, her husband; and the sum of \$2,500 in full settlement of her claim against the United States arising from injuries received while a passenger in an automobile which was struck by one being driven by Pvt. Jeter Maxwell [Maxwell P. Jeter] in Munich, Germany.

On January 31, 1948, at about 7:50 p. m., an Army 2½-ton truck traveling through the streets of Munich, Germany, at a speed of about 40 miles an hour, with a military police car in pursuit, crashed into a Ford sedan, owned and operated by 1st Lt. Anthony R. Parrish, in which his wife, Mrs. Anne Parrish, and 1st Lt. Alvin C. Manious and the latter's wife, Mrs. Dorothy Manious, were riding as passengers. Lieutenant Manious was instantly killed and Mrs. Manious sustained personal injuries. It appears that Lieutenant Parrish and Mrs. Parrish were not sufficiently injured to require medical treatment.

The evidence shows that the Army truck involved was operated by Private Maxwell P. Jeter, who at the time of the accident was using the vehicle without authority and for a personal mission, and that while the military police car was in pursuit of such truck the latter vehicle was driven up on the sidewalk and through a stop sign and that although it was then dark the truck's lights were switched off. Private Jeter was not apprehended until his truck crashed into a tree and stopped.

On the day of the accident the truck in question had been assigned to Private Jeter for an official mission, after the completion of which, it appears, he appropriated the vehicle to his own use. He was tried by general court martial on the charge of violation of the ninety-third article of war under the following specification:

"In that Private Maxwell P. Jeter, \* \* \* did at Munich, Germany, on or about January 31, 1948, through gross and culpable negligence, unlawfully kill First Lt. Alvin Manious, by striking an automobile in which the said Lieutenant Manious was riding with a 2½-ton truck, thereby causing fatal injuries to the said Lieutenant Manious."

Private Jeter was convicted of involuntary manslaughter and sentenced to be dishonorably discharged from the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority might direct for a period of 3 years. So much of the sentence as was in excess of 2 years was subsequently remitted.

Immediately after the accident Mrs. Manious was taken to the Ninety-eighth General Hospital, at Munich, for treatment, where her injuries were diagnosed as:

"1. Shock, mental.

"2. Multiple cuts, face, neck, and left ear."

She was discharged from this hospital as improved on February 2, 1948.

On December 13, 1948, Mrs. Manious submitted to a physical examination at the Three Thousand Nine Hundred and Second Air Force Hospital, Offutt Air Force Base, Fort Crook, Nebr., and a report of such examination, signed by Capt. W. B. Norman, Medical Corps, and Capt. J. L. Hoyt, Medical Corps, reads as follows:

"*Purpose of examination.*—Determination of any existing disability secondary to automobile accident, January 31, 1948, as claimed by Mrs. Manious.

"*History.*—Patient was unconscious for an unknown length of time following the above accident. She was hospitalized 3 days in an Army hospital near Munich, Germany. No X-rays were made as far as she knows to determine the presence or absence of skull fracture. The patient states that since the accident she has had the gradual development of a hearing loss on the left side. She states that she does not notice the hearing loss as often as do her friends. \* \* \*

"*Examination of the ears* reveal the following: Whispered voice, AD 15/15 and AS 7/15. The appearance of the membrana tympani is perfectly normal. No evidence of past rupture is seen. Audiogram studies over the frequencies of 124 through 8192, inclusive, reveal an average of 15 DB loss in the right ear, and 37 DB in the left ear. The curve for the left ear was a more or less straight curve involving all of the frequencies. This would be compatible with her very apparent loss of hearing in the conversational tones. Tuning fork examination revealed that the Weber lateralized to the right. AC and BC studies: AD-AC > BC equals observer; AS:AC equals BC half that of observer. The patient gave the observer no impression of malingering, but a malingering test was performed to alleviate any possibility of error. A stethoscope test was used and the patient only heard with her right ear. Controls were used on the test and it resulted in confusion for them. X-rays of the skull at this time reveal no skull fracture.

"*Diagnosis and summary.*—Deafness moderate, left perceptive type. This deafness results a loss of one-third to one-half of the patient's usable hearing in the left ear. The remainder of the patient's thorough physical examination reveals no further disability.

"It is not discernible at present whether or not this deafness was actually a result of the afore-mentioned accident."

No claim has been filed with the Department of the Army arising out of this accident.

At the time of her injury in this accident Mrs. Manious was 27 years of age. She was a photographer's model by profession and she states she has felt she has been too nervous to work since her injury, and she estimates her loss of earnings resulting from her injury at about \$1,500. It appears that since her return to the United States she has incurred expenses in the aggregate amount of \$75 for X-rays and medical examinations. Her hospitalization and medical treatment at the Ninety-eighth General Hospital in Munich were furnished by the United States without charge. It appears that her wearing apparel was damaged in the accident in the approximate amount of \$70.

The Department of the Army has been advised by the Veterans' Administration that at the time of his death Lieutenant Manious had in effect national service life insurance in the amount of \$10,000; that on August 23, 1948, this insurance was awarded to his widow, Mrs. Dorothy Manious, as principal beneficiary, in 36 equal monthly installments of \$289.90, commencing January 31, 1948, and ending December 31, 1950, and that on May 24, 1948, an award of death com-

pensation to Mrs. Manious was approved at the rate of \$38 a month commencing February 1, 1948. It appears that death compensation payments were made at this rate through August 31, 1948, were increased to \$60 a month effective September 1, 1948, and that such payments will continue until Mrs. Manious' remarriage or death.

The evidence clearly establishes that this accident and the resulting death of Lieutenant Manious and personal injury of Mrs. Manious were not caused by any fault or negligence on their part but were caused by the wanton and willful negligence of the driver of the Army truck involved. Since, however, the evidence also discloses that at the time of the accident the driver of the Army truck was using such vehicle without authority and for a personal mission, and, therefore, was not acting within the scope of his employment as a soldier, there is no obligation on the part of the United States to compensate the claimant for the damages sustained by her. The Department of the Army therefore refrains from making any recommendation either for or against the enactment of the bill, insofar as it would grant an award to Mrs. Manious for the personal injuries, property damage, and loss of earnings sustained by her and any medical expenses incurred for the treatment of her injuries, preferring to leave this aspect of the matter to the equitable determination of the Congress.

The Department is, however, opposed to the granting of an award to Mrs. Manious on account of the death of Lieutenant Manious. As hereinbefore shown she, as principal beneficiary under the policy of national service life insurance carried by her husband, is now receiving the proceeds of such insurance, and is also receiving death compensation in the amount of \$60 a month by reason of his death, which death compensation payments will continue to be paid to her until her remarriage or death. She has been awarded all of the benefits conferred by general law on the dependents of members of the Armed Forces of the United States who die in line of duty and, therefore, the granting of an additional award to her for the death of her husband, as proposed in H. R. 2929, would be discriminatory in character in that it would grant special benefits to her that are denied to the survivors of other members of the Armed Forces where the facts are similar. There are no facts present in this case that would warrant singling out this claimant for preferential treatment over other claimants similarly situated. The Department, therefore, is obliged to recommend that this bill, insofar as it would provide for an award for the death of Lieutenant Manious, be not favorably considered.

If, under the circumstances, the committee should look with favor upon the proposal to compensate Mrs. Manious for the property damage, personal injuries, medical expenses, and loss of earnings sustained by her as a result of this accident, the Department of the Army would have no objection to the granting of an award to her in the sum of \$2,500, as provided in H. R. 2929.

Should this bill be favorably considered by the Congress, it is recommended that the text of the bill be amended to read as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Dorothy Manious, of Nebraska City, Nebraska, the sum of \$2,500, in full settlement of all claims against the United States for property damage, personal injuries, medical expenses, and loss of earnings sustained by her as the result of an accident involving an Army truck, which occurred in Munich, Germany, on January 31, 1948: Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."*

The claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), for the reason that the accident out of which her claim arises occurred in a foreign country.

Inasmuch as the committee has requested that this report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether it conforms to the program of the President.

Sincerely yours,

GORDON GRAY,  
Acting Secretary of the Army.